

railroad corporation as if such stock or securities had been transferred to such persons as shareholders pursuant to the nonrecognition provisions of part III, subchapter C, chapter 1 of the Code. The determinative and controlling factors are the railroad corporation's insolvency and the effective command by the creditors over its property. The term *insolvent* as used in this section refers to insolvency at any time during the course of the proceeding referred to in section 374(a)(1), either in the sense of excess of liabilities over assets or in the sense of inability to meet obligations as they mature.

(5) A short-term purchase money note is not a security within the meaning of this section, and the transfer of the properties of the insolvent railroad corporation for cash and deferred payment obligations of the transferee evidenced by short-term notes is a sale and not an exchange.

(b) *Exchange for stock or securities and other property or money.* If an exchange would be within the provisions of section 374(a)(1) if it were not for the fact that the consideration for the transfer of the property of the insolvent railroad corporation consists not only of stock or securities but also of other property or money, then, as provided in section 374(a)(2), if the other property or money received by the railroad corporation is distributed by it pursuant to the plan of reorganization, no gain to the railroad corporation will be recognized. Property is distributed within the meaning of this section if it is paid over or distributed to shareholders or creditors who have by appropriate legal steps obtained effective command of the property of the railroad corporation. If the other property or money received by the railroad corporation is not distributed by it pursuant to the plan of reorganization, the gain, if any, to the railroad corporation from the exchange will be recognized in an amount not in excess of the sum of money and the fair market value of the other property so received which is not distributed. In either case no loss from the exchange will be recognized (see section 374(a)(3)). See section 354(c) relative to exchanges by stock or security holders.

[T.D. 6528, 26 FR 400, Jan. 19, 1961]

§ 1.374-2 Basis of property acquired after December 31, 1938, by railroad corporation in a receivership or railroad reorganization proceeding.

Section 374(b)(1) provides that if property of a railroad corporation, as defined in section 77(m) of the Bankruptcy Act (11 U.S.C. 205(m)), was acquired after July 31, 1955, in pursuance of an order of the court having jurisdiction of such corporation in either a receivership proceeding or a proceeding under section 77 of the Bankruptcy Act, and the acquiring corporation is also a railroad corporation as defined in section 77(m) of such Act, organized or availed of to effectuate a plan of reorganization approved by the court in such proceeding, the basis shall be the same as it would be in the hands of the transferor railroad corporation, increased in the amount of gain recognized to the transferor under section 374(a)(2) and paragraph (b) of § 1.374-1. For purposes of section 374(b)(1), it is unnecessary that the acquisition in question be a direct transfer from the corporation undergoing reorganization or that such reorganization constitute a reorganization within the meaning of section 368(a) since that section does not apply to part IV, subchapter C, chapter 1 of the Code. It is sufficient if the acquisition is in pursuance of an order of the court and is an integral step in the consummation of a reorganization plan approved by the court having jurisdiction of the proceeding. If the transaction falls within the provisions of section 374(b)(1), the basis of the property involved shall be determined pursuant to such provisions, notwithstanding that the transaction might also fall within another basis provision.

[T.D. 6528, 26 FR 401, Jan. 19, 1961, as amended by T.D. 7616, 44 FR 26870, May 8, 1979]

§ 1.374-3 Records to be kept and information to be filed.

(a) *Return information.* Each railroad corporation a party to a section 374(a) reorganization shall furnish a complete statement of all facts pertinent to the recognition or nonrecognition of gain or loss in connection with the exchange, including:

(1) A certified copy of the plan of reorganization approved by the court in